

Remarks

Claim Rejections under 35 USC § 102(b) based on Glenn reference WO 9811871

The 09/08/03 Office Action indicates that claims 1, 2, 5, 8, 9, 12, and 14 are rejected under 35 USC § 102(b) as being anticipated by Glenn WO 9811871, stating that:

Glenn teaches a lamellar phase (G-phase) structured surfactant system comprising sorbitol as the water soluble carbohydrate structurant, alkyl sulfate as the 5-30% surfactant and water. See page 3 paragraph 4-6, page 8 4th full paragraph, page 9 1st full paragraph – 2nd paragraph.

As regards rejections under 35 USC § 102, Applicants note that in order for a rejection under this section to be proper, "the reference must teach every aspect of the claimed invention" (MPEP, Feb. 2003 edition; pp. 700-21, col. 1, line 6 et seq. of the second full paragraph).

The 09/08/03 Office Action cites passages on 3 different pages of the Glenn reference, on page 3, page 8, and page 9. Page 3 of the Glenn reference teaches the range of 5-30% of surfactant. Page 8, 4th full paragraph of the Glenn reference teaches the presence of water. Page 9, 1st full paragraph to 2nd paragraph of the Glenn reference teaches the use of optional components useful for the Glenn formulations. The word "optional" is used in the first sentence of the first full paragraph on page 9. The use of the word optional would seem to indicate that sorbitol and other sugars mentioned in Glenn are not required to be present in order to achieve the object of the invention which was set forth in the second paragraph of page 2 of Glenn, namely to provide a lamellar liquid structure (also known as the neat phase). Therefore, Glenn teaches that sugar is not required to impart lamellar characteristics to the compositions of Glenn. Therefore, all features of Applicant's claimed invention are not present in the Glenn reference,

since Applicants claim 1 requires that the water-soluble carbohydrate in Applicant's claimed invention is present in the capacity of structurant. Thus, the rejection of claims 1, 2, 5, 8, 9, 12, and 14 are rejected under 35 USC § 102(b) should be withdrawn because every feature of Applicants' invention is not taught in the Glenn reference.

Claim Rejections under 35 USC § 102(b) based on Vasudevan reference EP 732 394

The 09/08/03 Office Action indicates that claims 1-3, 7, 9, 12-14 are rejected under 35 USC § 102(b) as being anticipated by the Vasudevan reference, EP 732 394, stating that:

"Vasudevan teaches liquid detergent composition comprising a lamellar phase (G-phase) structured surfactant system containing 1-25% sorbitol as the water soluble carbohydrate structurant, alkyl sulfate as the 30-80% surfactant, 1-60% electrolyte (sodium citrate) and water. Vasudevan teaches that the system is visibly clear. Vasudevan also teaches lamellar drops dispersed in aqueous medium (dispersion / suspension) containing 15% electrolyte. See abstract, page 3 lines 5-51, Example 13."

All of the systems disclosed in the Vasudevan reference are spherulitic systems comprised of lamellar droplets of colloidal-sized drops of G-phase material dispersed in a continuous aqueous phase. As explained in Applicants' instant specification (PCT WO 01/05932) on page 9, lines 8-11, this is what happens when insufficient structurant is present. At a level of only 9.3 % by weight (13.3 % multiplied by 70% because the sorbitol is in aqueous solution therein) in Example 13 of Vasudevan, the sorbitol as used therein is not present in sufficient a quantity to act as a structurant. This is taught by Applicant beginning on the last line of page 9 of his PCT WO 01/05932 carrying over to page 10 thereof. From these combined teachings, it is clear that the use of a carbohydrate itself as a structurant is not taught in Vasudevan. Since Applicant's claim 1 specifically includes the limitation that the carbohydrate is present in the capacity of

structurant, the prior art of Vasudevan does not describe every feature of Applicant's claimed invention, and the rejection of claim claims 1-3, 7, 9, 12-14 under 35 USC § 102(b) should be withdrawn. The Vasudevan reference repeatedly refers to his systems as being "lamellar droplets" (see pp2, lines 6-7; pp. 3, lines 6, 18, 35, 57, and elsewhere through out that spec.) Again, the prior art of Vasudevan teaches spherulitic systems which are also called lamellar droplets, which are colloidal size drops of G-phase dispersed in a continuous aqueous phase. Thin G-phases are known, which are structured by electrolyte, but prior to Applicant's instant specification, it has never been known that any non-electrolyte could induce structure of any kind. Applicants' claims reflect his desire to claim this invention of aqueous compositions which employ water-soluble carbohydrates as structurants, which is not disclosed in the prior art. Thus, Applicant believes that since the Vasudevan reference does not disclose the use of water soluble carbohydrates as structurants in a continuous G-phase system as is taught by Applicant, the rejection of claims 1-3, 7, 9, 12-14 under 35 USC § 102(b) should be withdrawn.

Claim Rejections under 35 USC § 103(a) based on Vasudevan reference EP 732 394

The 9/8/03 Office Action indicates that claims 4, 6, 10, and 11 are rejected under 35 USC § 103(a), stating that:

"Vasudevan teaches all that is recited in claims 4, 6, 10, 11 except for the composition comprising greater than 15nm lamellar repeat spacing, and greater than 20% water. It would have been obvious to one having ordinary skill in the art to determine the optimum amount of lamellar spacing and water. One would have been motivated to do this in order to make the most effective detergent composition."

Applicant respectfully rebuts this, noting that MPEP 8th edition, § 706.02(j) sets forth on

page 700-31 the three basic criteria which must be met for establishing a *prima facie* case of obviousness:

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based upon applicant's disclosure."

Thus, a requirement for the establishment of a *prima facie* case of obviousness and hence a proper rejection under 35 USC § 103(a) is that there must be some suggestion or motivation present to modify the reference to meet Applicant's instant claims. The 9/8/03 Office Action has failed to meet this burden. This is apparent from reading the rejection in the 9/08/03 Office Action, particularly the statements which appear prior to the conclusion of alleged obviousness.

The statement which alleges obviousness in the 9/08/03 Office Action reads:

" It would have been obvious to one having ordinary skill in the art to determine the optimum amount of lamellar spacing and water. One would have been motivated to do this in order to make the most effective detergent composition."

which is a peculiar way to attempt to formulate a *prima facie* case of obviousness, because the entirety of that which preceded this conclusion are the statements:

" Vasudevan teaches all that is recited in claims 4, 6, 10, 11 except for the composition comprising greater than 15nm lamellar repeat spacing, and greater than 20% water."

which is nothing more than a statement alleging what is taught by the reference. No motivation is found in the Vasudevan reference. Thus, it is not possible that a conclusion of obviousness can follow from this, and no *prima facie* case of obviousness is present. The Office Action only

contains an alleged conclusion of obviousness, without identifying any motivation in the prior art for arriving at applicant's claims.

What is specifically missing from the prior art of record is any teaching, suggestion, or motivation that a water-soluble carbohydrate is useful as a structurant in a structured liquid surfactant system, which is what Applicant is claiming.

Alternatively, if it is true as the Office Action asserts that: "One would have been motivated to do this in order to make the most effective detergent composition", then Applicant respectfully asks the question of what exactly does this statement mean ? If it is true, then Applicant would like to know what is the exact composition of the "most effective detergent composition" that is taught by the Vasudevan reference, and what the evidence in Vasudevan is to support the conclusion that whatever formula the Office specifies in the next Office Action is the "most effective". In addition, what is meant by "most effective" ? Does this mean most effective for removing dirty motor oil from polyester fabrics or most effective for removing household dirt from floors and walls ? Applicant respectfully asserts that the words "most effective" are meaningless without a specification concerning what they are referring to being most effective at. Thus, the Office Action raises more questions than it answers with this statement, and is therefore confusing.

In addition, since claim 2 is not anticipated by the prior art and is not subject to an obviousness rejection, and since claims 4, 10, and 11 are dependent ultimately from claim 2, claims 4, 10, and 11 should be in condition for allowance. Claim 6 has been amended to include the same limitation of claim 1, namely that the carbohydrate is present as a structurant.

Thus, Applicant respectfully submits that all claims are currently in condition for allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Whewell". The signature is fluid and cursive, with the first name "Chris" and last name "Whewell" clearly distinguishable.

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